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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 400

MRS. E. G. SAVERIO, Intervenor,
Petitioner,

vs.

MRS. O. A. CARTER,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Tennessee.

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INDEX.

	Page
Opinions below	1
Jurisdiction	2
Decisions sustaining jurisdiction	2
Questions presented	2
Statutes involved	5
Statement of the case	5
Reasons for granting the writ	8
Conclusion	14

APPENDICES:

A—Constitutional provisions zoning ordinance provisions	15
B—Opinion and Decree of Chancery Court, Opinion and Decree of Supreme Court of Tennessee, Opinion and Decree of Supreme Court of Tennessee, on rehearing	19
C—Excerpts from Record raising Federal Question	37

Citations.

Association for the Preservation of Block 1700 v. Duke, 356 F. (2d) 344	12
Board of Supervisors of Scott County v. Paaske (Iowa), 98 N. W. (2d) 827	13
Carter v. Board of Zoning Appeals (Tenn.), 377 S. W. (2d) 914	6
Chemical Works v. Missouri, 238 U. S. 41, 35 S. Ct. 671	2

City of Buffalo v. Roadway Transit Co., 303 N. Y. 453, 104 N. E. (2d) 96 11
City of Dallas v. Halbert (Tex.), 246 S. W. (2d) 686 10
City and County of Denver v. Stackhouse (Colo.), 310 P. (2d) 296 13
Cos Corporation v. Evanston (Ill.), 190 N. E. (2d) 364 13
Dennis v. Village of Tonka Bay (Minn.), 64 F. Supp. 214, affirmed, 156 F. (2d) 672 11
Green Bay, Etc. Canal Co. v. Patten Paper Co., 172 U. S. 58, 19 S. Ct. 97 2
In Re O'Hara's Appeal (Pa.), 131 A. (2d) 587 10
Ker v. State of California, 374 U. S. 23, 83 S. Ct. 1623 2
Leventhal v. District of Columbia, 100 F. (2d) 94 12
Lewis v. District of Columbia, 190 F. (2d) 25 12
Loeb v. Columbia Tp., 179 U. S. 472, 21 S. Ct. 174 2
Miedreich v. Lauenstein, 232 U. S. 236, 34 S. Ct. 309 .. 2
Napue v. People, 360 U. S. 264, 79 S. Ct. 1173 2
Nectow v. Cambridge, 277 U. S. 188, 48 S. Ct. 448 9
Packer v. Board of Standards and Appeals, 62 N. Y. S. (2d) 54 11
Sakolsky v. Coral Gables (Fla.), 151 So. (2d) 433 13
State v. Board of Appeals of Racine (Wis.), 64 N. W. (2d) 741 13
State v. Nashville (Tenn.), 343 S. W. (2d) 847 14
State v. Oak Hill (Tenn.), 321 S. W. (2d) 557 14
State of Washington v. Roberge, 278 U. S. 116, 49 S. Ct. 50 9
Tankersley Bros. Industries v. Fayetteville (Ark.), 296 S. W. (2d) 412 13
Village of Euclid v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114 12

Walls v. Guntersville (Ala.), 45 So. (2d) 468 11
Willis v. Woodruff (S. C.), 20 S. E. (2d) 699..... 13
Wolpe v. Poretsky, 144 F. (2d) 505..... 12

Zahn v. Board of Public Works, 274 U. S. 325, 47 S. Ct. 594 12

Statutes:

28 U. S. C. A., Sec. 1257 (3) 2
Section 42-14 of Chapter 42 of the 1960 Code of the City of Nashville, Tennessee 5
Sections 8, 9, 14, 15, 22, 25 and 27 of Chapter 39 of the Code of the City of Nashville, Tennessee 5

Miscellaneous:

Amendment XIV of the Constitution of the United States, U. S. C. A., 1949 Ed., p. 40 .....2, 5, 8, 15

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To the Supreme Court of Tennessee.

Your petitioner prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Tennessee, entered in the above styled case on May 6, 1966, being a denial of a timely filed Petition for Rehearing of its earlier judgment of February 25, 1966.

CITATIONS TO OPINIONS BELOW:

The opinion of the Chancery Court for Davidson County, Tennessee, Part I, in Equity (R. 29A-31), is unreported and is printed in Appendix B hereto, infra, pp. 19-22. The opinion of the Supreme Court of Tennessee (R. pp. 185-194), printed in Appendix B hereto, infra, pp. 24-32, is unreported, and the opinion of the Supreme Court of

Tennessee, on rehearing (R. pp. 227-230), printed in Appendix B hereto, infra, pp. 32-36, is likewise unreported.

JURISDICTION:

The judgment of the Supreme Court of Tennessee was entered on February 25, 1966 (R. p. 195).

The judgment of the Supreme Court of Tennessee, on rehearing, was entered on May 6, 1966 (R. p. 231).

The jurisdiction of this Court is invoked under the provision of 28 U. S. C. A., Section 1257 (3).

DECISIONS SUSTAINING JURISDICTION:

The following decisions sustain the jurisdiction of this Court to review the judgment of the Supreme Court of Tennessee in this cause on an application for a writ of certiorari: **Ker v. State of California,** 374 U. S. 23, 83 S. Ct. 1623; **Napue v. People,** 360 U. S. 264, 79 S. Ct. 1173; **Chemical Works v. Missouri,** 238 U. S. 41, 35 S. Ct. 671; **Miedreich v. Lauenstein,** 232 U. S. 236, 34 S. Ct. 309; **Loeb v. Columbia Tp.,** 179 U. S. 472, 21 S. Ct. 174; **Green Bay, Etc. Canal Co. v. Patten Paper Co.,** 172 U. S. 58, 19 S. Ct. 97.

QUESTIONS PRESENTED:

I.

Was Due Process of Law denied the petitioner by the Supreme Court of Tennessee's holding that she did not acquire vested rights on the strength of the permit issued for the use of her property for a Babies Valet Service?

II.

Has Due Process of Law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States, been denied the petitioner by the action of the

Supreme Court of Tennessee in invalidating the variance granted on February 11, 1963, under which she has, in good faith, acted and incurred heavy expenses in reliance on the permit granted on February 18, 1963?

III.

Did the petitioner have the right to rely on the validity of the granted variance and thereby have the right to incur heavy expenditures in improving her property?

IV.

Did the Supreme Court of Tennessee have the right to hold that the order of the Zoning Board of Appeals of Nashville, Tennessee was illegal, arbitrary and void?

V.

Did the Supreme Court of Tennessee have the right to hold that the effect of the action of the Board of Zoning Appeals of Nashville, Tennessee was to amend the zoning laws of said city under the guise of a variance, and did the Tennessee Supreme Court, in so holding, not err in failing to hold that the said Board made a determination of law and fact within its properly delegated powers?

VI.

Did the Supreme Court of Tennessee, in affirming the action of the lower court, have the right to substitute its judgment for the judgment of the Board of Zoning Appeals of Nashville, Tennessee, thereby invalidating its grant of a variance on the strength of which the petitioner has, in good faith, acquired and remodeled property and installed machinery therein for the operation of her lawful business of a Babies Valet Service?

VII.

Did not the grant of a variance on the strength of which the petitioner acquired and improved her property,

incurring expenses in excess of $240,000.00, confer vested rights upon the petitioner to so utilize her property?

VIII.

Did the Supreme Court of Tennessee not act erroneously in failing to hold that the Zoning Board of Nashville, Tennessee had the right, under its lawful interpretive powers, to grant a variance in a Commercial District for the operation of a Babies Valet Laundry Service under the Board's finding that the variance was in harmony with the existing ordinances defining uses permitted in the commercial zone.

IX.

Did the Supreme Court of Tennessee not deny Due Process of Law to the petitioner by failing to hold that the Board of Zoning Appeals properly considered all relevant factors bearing on its powers and jurisdiction in granting the variance in this cause?

X.

Did not the Supreme Court of Tennessee deny Due Process of Law to the petitioner in not holding that the Board's broad powers gave it the right to determine permissive uses for a laundry service of the type proposed by the petitioner in a Commercial "A" District?

XI.

Did not the Supreme Court of Tennessee err in not indulging in favor of the petitioner the well established rule that zoning ordinances should be strictly construed in favor of a property owner?

XII.

Did the Supreme Court of Tennessee not err in failing to hold that the petitioner acted prudently in proceeding

under the permit approved on February 11, 1963, and issued on February 18, 1963, thereby vesting rights in the petitioner to proceed in accordance with said permit?

STATUTES INVOLVED:

The statutory provisions involved are as follows:

Section 42-14 of Chapter 42 of the 1960 Code of the City of Nashville, Tennessee;

Sections 8, 9, 14, 15, 22, 25 and 27 of Chapter 39 of the Code of the City of Nashville, Tennessee;

and,

Amendment XIV of the Constitution of the United States.

These statutory provisions are to be found in Appendix A, infra, pp. 15-18.

STATEMENT OF THE CASE.

The petitioner herein, Mrs. E. G. Saverio, operated the Babies Valet Service for many years at 318 Meridian Street, in Nashville, Tennessee, until forced to move her business as the result of the East Nashville Urban Renewal Project. Seeking a suitable location, the petitioner became interested in property at 811 Gallatin Road, in Nashville, and began negotiations with a Mr. Fred C. Dance, agent for the owner, Mr. O. H. Callicott. It developed that it would be necessary to secure a variance in the zoning requirements under the Nashville zoning ordinances in order for the petitioner to utilize the property at 811 Gallatin Road for her Babies Valet Service.

Thereupon, the owner of the premises, O. H. Callicott, through his agent, Fred C. Dance, made application for a building permit and certificate of occupancy for the premises in question, which was refused, and an appeal was taken to the Board of Zoning Appeals of Nashville (R. pp. 10, 11).

The Board of Zoning Appeals, on February 11, 1963, approved the request of the appeal in Case No. 63-1, and thereafter, on February 18, 1963, an application for a building permit and certificate of occupancy was approved and issued, based on the action taken on February 11, 1963 (R. pp. 11, 15, 24, 112, 115).

On March 4, 1963, the petitioner, relying upon the validity, force and effect of the permit thus issued, purchased the lot and building in question in this cause, located in a Commercial "A" zoning district, from the owner, O. H. Callicott, for the sum of Sixty-Six Thousand ($66,000.00) Dollars. Immediately following this purchase the petitioner began remodeling her property to accommodate her business, and proceeded expeditiously at an additional cost of Sixty-Five Thousand ($65,000.00) Dollars. Plant equipment was thereupon installed in the building at a further cost of One Hundred Nine Thousand, Six Hundred, Sixty-Eight ($109,668.00) Dollars, making her total expenses in reliance on said permit, Two Hundred, Forty Thousand, Six Hundred and Sixty-Eight ($240,668.00) Dollars (R. pp. 11, 12). This activity of the petitioner has resulted in a modernly constructed business building, completely enclosed with respect to its business operations and activities, with adequate off-street parking facilities all as approved by the Zoning Board of Appeals (R. p. 12).

Thereafter, on April 25, 1963, the Respondent, Mrs. A. O. Carter, a neighboring property owner, filed a petition for certiorari in the Chancery Court of Davidson County, Part I, Tennessee, questioning the validity of the variance and permit heretofore referred to (R. pp. 2, 6, 31, 145). A motion to dismiss because the petition was not timely filed was sustained by the Chancellor, but on appeal to the Tennessee Supreme Court this decision was reversed, **Carter v. Board of Zoning Appeals** (Tenn.), 377 S. W. (2d) 914 (R. pp. 120, 121).

Thereupon, the cause came back to the Chancery Court of Davidson County, Tennessee, for a hearing on the merits and at this time the petitioner herein was granted the right to file her separate answer as an intervenor (R. p. 9). Petitioner thereupon filed her intervening answer, contending that the action of the Board on February 11, 1963, and February 18, 1963, was in all respects proper and valid under the Board's delegated powers and that as the result of said action and the issuance of the permit in question she had a vested right to proceed under her permit, asserting at her first opportunity to do so that this vested right could not be divested by the lower court, without interference with her constitutional rights in and to the use of her property (R. pp. 10-14).

The Chancellor, after a full hearing on the merits, sustained the respondent's petition for certiorari on March 19, 1965, holding the action of the Board to be illegal and that the Board had exceeded its authority in granting the variance. The Chancellor held additionally that although the petitioner had expended large sums of money in acquiring, rebuilding and equipping her plant, she had not acquired any vested rights (R. pp. 32, 33).

Petitioner, thereupon, perfected an appeal to the Supreme Court of Tennessee, which Court, on appeal, affirmed the Chancellor below, and also held invalid the action of the Board of Zoning Appeals, authorizing the permit, issued February 18, 1963. In this opinion, filed February 25, 1966 (R. pp. 185-194), the Tennessee Supreme Court likewise held that the petitioner herein acquired no vested property rights in connection with the issuance of the permit, thereby rejecting petitioner's contention of violation of her constitutional rights (R. pp. 193-194).

Thereupon, the petitioner timely filed her petition to rehear the decision of the Tennessee Supreme Court which had been rendered on February 25, 1966 (R. pp. 196-205), and her belief in support thereof (R. pp. 206-217). In her

petition to rehear, this petitioner again called to the attention of the Supreme Court of Tennessee her plight in being denied her vested property rights under her permit (R. p. 204). In her brief in support of her petition to rehear, she emphasized that the denial of her vested rights violated the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States (R. p. 216).

The Supreme Court of Tennessee, on May 6, 1966, denied the petition to rehear of the petitioner (R. pp. 227-230), and in effect and by force of its ruling denied to the petitioner her vested property rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT.

The decision of the Tennessee Supreme Court, setting aside the granting of the variance in this cause, and rejecting the petitioner's claim of vested right to proceed under the permit issued on the strength of such variance, violated the primary property rights of the petitioner as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and as the result of such decision, irreparable hurt and damage has been inflicted upon the petitioner and she has accordingly been denied due process of law.

The vested rights of the petitioner, as guaranteed by the Fourteenth Amendment to the Constitution of the United States are so closely interwoven with the holding of the Tennessee Supreme Court in substituting its judgment for the judgment of the Nashville Board of Zoning Appeals in granting the variance and permit in this cause that the same must be considered together.

Under the Nashville ordinances, steam and power laundries were, it is true, prohibited in Commercial A Dis-

tricts, but these provisions were enacted in 1933, thirty three years ago, as a part of the then original zoning ordinance of Nashville. **But times have changed**, bringing new innovations in laundry techniques. This the Zoning Board of Nashville recognized in granting the variance in this case, when it said:

> ". . . and finding from the file record and other information presented in public hearing that there would be three (3), three-hundred (300) pound capacity washers, powered by an electrically generated steam boiler, which is a relatively new concept in laundry equipment, and is not of the same type equipment used in steam or power laundries at the time of the zoning regulations and expressly prohibited in Commercial B Districts. . . . . That the Board being of the opinion, due to the type of business and equipment involved that the granting of this request would not be contrary to the spirit and intent of the zoning regulations and that justice would be done; now, Therefore, this board does grant in full the request of said appeal, and the issuance of the necessary building permit and certificate of occupancy is hereby authorized."

This Court has said:

> "The governmental power to interfere by zoning regulations with the general rights of the landowner by restricting the character of his use, is not unlimited, and other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals or general welfare." **State of Washington v. Roberge**, 278 U. S. 116, 49 S. Ct. 50; **Nectow v. Cambridge**, 277 U. S. 108, 48 S. Ct. 448.

While the Chancellor below and the Tennessee Supreme Court, on affirmance, construed the action of the Board

of Zoning Appeals of Nashville as being governed solely by Section 14 (6) of the Nashville ordinances (R. pp. 48, 49), which is the Section permitting variances in hardship cases, the attention of this Court is directed to the fact that stipulations duly made a part of the record provide that the Board has other powers upon review, including the power to make determinations of compliance with the regulations by way of review of the acts of the building inspector in refusing a permit (R. p. 51).

The Board thus made a determination and an interpretation of the rights of this petitioner which constituted a decision that the said Board was fully empowered to make (R. p. 51).

The petitioner insists that the Board, having taken jurisdiction of the cause for one purpose, took jurisdiction for all purposes within its powers. The power to conduct a hearing necessarily includes the authority to render a decision on the evidence presented. **In Re O'Hara's Appeal** (Pa.), 131 A. (2d) 587.

Jurisdiction has been defined as the power to hear the facts involved in a particular controversy; to decide the existence or the non-existence of such material facts; to apply the law to such findings, and then render judgment or award based on such legal conclusions from the facts. **City of Dallas v. Halbert** (Tex.), 246 S. W. (2d) 686. This is what the zoning board did in this case. It had the power to make its determination; it considered the facts and applied the ordinance to the facts, and granted relief to this petitioner. The Supreme Court of Tennessee should not have become a second trier of fact in this matter. It should not have substituted its judgment for the judgment of the Board.

Furthermore, the interpretation and determination by the Board was in keeping with the zoning decisions bearing on the right to consider modern instrumentalities in

the interpretation of permitted uses under zoning ordinances. As the Supreme Court of Alabama said in **Walls v. Guntersville** (Ala.), 45 So. (2d) 468, at page 472:

> "It would be next to impossible to designate in minute detail the various types and character of business which might or might not be permissive or offensive, and the determination of such facts of necessity must be left to the honest judgment of some designated official."

As the Court stated in **Packer v. Board of Standards and Appeals**, 62 N. Y. S. (2d) 54, a laundry case:

> "Labels applied to old processes should not be construed so as to retard the development of new techniques designed for the improvement of living conditions and for the convenience and welfare of the general public."

It is well settled that a legislative body need not act anew each time scientific progress introduces some incidental variation into a situation already covered by general language in the statutes. **City of Buffalo v. Roadway Transit Co.**, 303 N. Y. 453, 104 N. E. (2d) 96.

Facts in existence at the date of passage of a zoning ordinance are only material factors to consider in determining whether the application of the ordinance to particular property would deprive the owner of his property without due process of law. **Dennis v. Village of Tonka Bay** (Minn.), 64 F. Supp. 214, affirmed, 156 F. (2d) 672.

In the light of the administrative determination of the Board and the decisions adverted to above, and in support thereof, it is clear that the Chancellor below and the Tennessee Supreme Court erred in holding that the Board, in effect, amended the ordinances of Nashville under the guise of a variance, and that they likewise erred in substituting their judgment for the judgment of the Zoning Board of Nashville. On this question of substitution of judgment,

the zoning decisions of the Federal Courts appear very apropos when applied to the facts at bar. The Federal rule is thus stated:

"In reviewing the exercise of a zoning discretion, it is not the function of the court to substitute its judgment for that of the commission even for reasons which appear most persuasive . . . The action of zoning authorities, as of other administrative officers, is not to be declared unconstitutional unless the court is convinced that it is clearly arbitrary and unreasonable, having no relation to the general welfare . . . If the question is fairly debatable the zoning stands." **Lewis v. District of Columbia** (U. S. Ct. App., D. C. Circuit), 190 F. (2d) 25; **Wolpe v. Poretsky**, 144 F. (2d) 505; **Leventhal v. District of Columbia**, 100 F. (2d) 94. This principle of zoning law, announced at the Federal level, has been recently restated by the United States Court of Appeals, District of Columbia Circuit, in the case of **Association for the Preservation of Block 1700 v. Duke**, 356 F. (2d) 344 (January, 1966).

This Court has spoken in the same vein. **Zahn v. Board of Public Works**, 274 U. S. 325, 47 S. Ct. 594; **Village of Euclid v. Ambler Realty Co.**, 272 U. S. 365, 47 S. Ct. 114.

In upsetting and overturning the well considered action of the Zoning Board of Nashville in this case at the behest of a disgruntled neighboring property owner, the Supreme Court of Tennessee, in affirming the Chancellor below, has played havoc with the vested rights of this petitioner who, in entire good faith, has incurred expenses of approximately $240,000.00 in reliance on the permit issued on February 18, 1963, upon authorization of the Board. That the petitioner was blameless in the incurring of such expenditures is abundantly clear from the record in this cause. In his Memorandum Opinion below, the Chancellor, while rejecting the petitioner's claim of vested rights, seasonably interposed, made this observation:

"The circumstances of this case are unfortunate because of the **delay of the Board** in entering its order . . ." (R. p. 31). (Emphasis ours.)

The Supreme Court of Tennessee, in also rejecting the claim of vested rights by the petitioner, has this to say in its opinion:

"The financial injury to the various persons involved in this matter can be traced to the delay of the Board in finalizing its decision into an official record, and board's failure to apply the law as it appears in the Code of the City of Nashville" (R. p. 194).

Bearing on the good faith of the petitioner in making her expenditures, let it be understood that this petitioner did not first purchase the property involved and make the very substantial expenditures that have been detailed heretofore in this petition, and then seek a variance. The variance had been granted, and the permit issued, before she consummated her real estate transaction and before she incurred her expenditures. The courts have very generally held that where a permit has once been granted by an officer authorized to issue it and the permittee has acted in reliance thereon and incurred expense, the right to continue construction under such permit becomes a vested right. **Tankersley Bros. Industries v. Fayetteville** (Ark.), 296 S. W. (2d) 412; **City and County of Denver v. Stackhouse** (Colo.), 310 P. (2d) 296; **Sakolsky v. Coral Gables** (Fla.), 151 So. (2d) 433; **Cos Corporation v. Evanston** (Ill.), 190 N. E. (2d) 364; **Board of Supervisors of Scott County v. Paaske** (Iowa), 98 N. W. (2d) 827; **Willis v. Woodruff** (S. C.), 20 S. E. (2d) 699; **State v. Board of Appeals of Racine** (Wis.), 64 N. W. (2d) 741.

Zoning laws are in derogation of the common law, and operate to deprive an owner of a use of land which might otherwise be lawful; hence, such laws should be strictly

construed in favor of a property owner. **State v. Nashville** (Tenn.), 343 S. W. (2d) 847; **State v. City of Oak Hill** (Tenn.), 321 S. W. (2d) 557.

This strict construction should have been indulged in favor of this petitioner by the Supreme Court of Tennessee, which Court should have held that the proposed use of the petitioner conformed with the ordinance, a holding that the Board of Appeals of Nashville recognized in granting the variance.

It would appear fundamental that a proper Federal question is presented in this case. This petitioner feels that this Court can and should examine the record in this cause, evaluate the findings of the lower court and the Supreme Court of Tennessee, and thereby preserve for this petitioner her basic constitutional rights in and to the use of her property for the business purposes heretofore outlined and detailed.

It is respectfully urged that unless this petitioner is granted a review of the decision of the Supreme Court of Tennessee in this case she will be denied due process of law in a manner that will destroy her business and nullify her life's savings and that the many years of effort in producing a worthwhile community service will be abruptly and unjustly rendered fruitless.

CONCLUSION.

For the foregoing reasons, it is respectfully urged that this Petition for a Writ of Certiorari should be granted.

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APPENDIX.

APPENDIX

APPENDIX A.

Constitution of the United States of America.

Article XIV.

Section (1). All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U. S. C. A., 1949, Ed. p. 40.

Section 42-14, Chapter 42, 1960 Code of the City of Nashville, Tennessee.

Section 42-14. Board of Appeals.

Any determination by the chief building inspector made in the enforcement of this article may be appealed to the Board of Zoning Appeals by any person deeming himself adversely affected by such decision . . .

It shall hear and decide all questions brought before it by appeal from the refusal, granting or revoaction of permits by the chief building inspector under the provisions of this article . . . Within its powers the board may reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination as in its opinion ought to be done under the circumstances and to that end it shall have all the powers of the officer from whom the appeal is taken and it may issue or direct the issuance of a permit . . .

(7) To hear and decide appeals wherein it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the chief building inspector, or any other administrative official in carrying out the enforcement of any provisions under these regulations.

Sections 8, 9, 14, 15, 22, 25 and 27, Chapter 39, of the Code of the City of Nashville, Tenn.

Section 8. Commercial A Districts.

Uses. Within any Commercial A District, no building, structure, or premises shall be used or arranged or designed to be used in any part except for one or more of the following uses:

(1) Any use permitted in any Residence District . . .

(1-2) Trailer parks . . .

(2) Retail business. Commercial billboard or advertising sign. Restaurant. Hand laundry and self-service laundry. Ice Delivery Station. Shop for making articles to be sold at retail on the premises. Any other enterprise for profit, for the convenience and service of, and dealing directly with and accessible to the ultimate consumer and being an enterprise not mentioned as prohibited in a Commercial B District and not injurious to adjacent premises or occupants thereof by reason of the emission of dust, fumes, smoke, odor, noise, vibration or danger to life and property.

(3) Dry Cleaning and Pressing Shop . . .

(4) Public garage . . .

(5) Studio, Office. Retail greenhouse.

(6) Bank. Theatre . . .

(7) Retail poultry business . . .

(8) Accessory uses, customarily incident to a use authorized by this section, but no use prohibited in

a Commercial B District shall be permitted as an accessory use.

Section 9. Commercial B Districts.

Uses. Within any Commercial B District, no building, structure, or premises shall be used or arranged or designed to be used in any part for any of the following uses:

(17) Steam or power laundry.

Section 14. Board of Appeals.

The Board of Zoning Appeals shall have power to permit exceptions to and variations from the requirements as follows:

(6) Where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the zoning regulations, or by reason of exceptional topographical conditions or other extraordinary and exceptional situations or conditions of such piece of property the strict application of these regulations would result in peculiar and exceptional practical difficulty to or exceptional or undue hardship upon the owner of such property, the Board of Zoning Appeals shall have power in a specific case to vary from such strict application so as to relieve such difficulties or hardships, provided such relief may be granted without substantially impairing the intent and purpose of the zoning plan and the zoning ordinance.

Section 15. Definitions.

(H-1) **Self-Service Laundry.** A business rendering a retail service by making available to retail customers for a charge, at a fixed location, equipment for washing and drying laundry, which such equipment to be serviced, and its operation supervised or

performed by the management, under and subject to the following conditions, limitations and restrictions:

(1) Equipment for washing laundry shall consist only of the home type washing machines with capacity of not more than eighteen (18) pounds each, according to manufacturer's rating, the total capacity of all machines not to exceed 270 pounds. The equipment for drying laundry shall consist only of extractors, together with equipment for drying with heated air.

Section 22. Public Hearing.

(5) The Board shall keep minutes of its proceedings showing the vote of each member on every question . . .

Section 25. Final Disposition of Appeal.

(1) The final disposition of any appeal to the Board of Zoning Appeals shall be in the form of a resolution, which shall affirm, modify or reverse the refusal of a permit by, or any order, or decision of the Chief Building Inspector.

Section 27. Officers.

(2) The Director of Planning of the City Planning Commission shall serve as Secretary to the Board, keep all records, conduct official correspondence, and generally supervise the clerical work of the Board, and is authorized to draw upon the employees of the City Planning Commission for such assistance as is necessary in the performance of these duties.

APPENDIX B.

Mrs. A. O. Carter
vs. No. 85239
Board of Zoning Appeals
of Nashville, et al.

In the Chancery Court,
Part One,
At Nashville.

Memorandum.

It is my opinion that the Petition for Certiorari should be sustained because the action of the Zoning Board of Appeals in granting a variance was illegal.

The property involved is located in a Commercial A zone, and the Board granted a variance to permit a power laundry which is not permitted in a Commercial A zone.

From the proof one can only believe that the proposed operation was a power laundry. Mr. Dance testified:

> "These are huge automatic washers."

Speaking of the machines he testified that:

> "She has two now. She may put in a third."

As to the number of employees, he testified:

> "The truck drivers—there are ten or twelve . . . On the inside, there will be some 12 to 15 people, other than the administrator end of it. The lady has two sons that is with her."

Further, the relief sought was filed for under Section 14 (6) of the zoning ordinances.

This Section 14 (6) provides:

> "Where by reason of exceptional narrowness, shallowness or shape of a specified piece of property at

the time of the enactment of the zoning regulations, or by reason of exceptional topographical conditions or other extraordinary and exceptional situations or conditions of such piece of property the strict application of these regulations would result in peculiar and exceptional practical difficulty to or exceptional or undue hardship upon the owner of such property, the Board of Zoning Appeals shall have power in a specific case to vary from such strict application so as to relieve such difficulties or hardships, provided such relief may be granted without substantial determent to the public good and without substantially imparing the intent and purpose of the zoning plan and the zoning ordinance."

There was no proof before the Board which even remotely concerned Section 14 (6).

The recent case of **Reddoch v. Smith**, 379 S. W. (2d) 641, controls this case. In the **Reddoch** case, Chief Justice Burnett held:

> "A board of the kind here under consideration, being an administrative agency, does not have legislative powers and may not review or amend legislatively enacted rules as to uses or amend ordinances under the guise of a variance. This board was created to administer the zoning ordinance, but not to formulate and revise it. Under § 6 of Chapter 625, Private Acts of 1935, hereinabove referred to, and specifically under subsection 3 thereof, this board in passing on appeals is given the power to change certain properties 'where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such regulations . . .' In so doing the board is 'vested with a wide discretion and the courts will not interfere with the discretion unless it is abused.' Yokley, supra, § 142, page 350."

By this I consider it is meant that a Zoning Appeals Board must confine its action within the scope of the zoning ordinances and cannot amend zoning ordinances under the guise of a variance. But when so acting, within the framework of the ordinance, such boards are vested with wide discretion and the courts should not interfere with that discretion unless it is abused.

Further on in his Opinion the Chief Justice states:

> "In considering whether there is material evidence to support the variation allowed, we do not consider one factor alone on this question of 'practical difficulty' or 'unnecessary hardship', but all relevant factors must be considered and if from all of these factors there is material evidence in the record which has convinced the Board of Zoning Appeals that a variation should be allowed, then we as a Court do not have the right or authority to interfere with this variation allowed by the Board."

I do not construe this to mean a widening of the authority of Zoning Appeals Boards from the authority of the boards as set out in the first above quoted ruling. I think this last quote simply means that if there is material evidence which has convinced the board that a variance should be granted, then the courts should not interfere with the holding. However, the material evidence and the conviction of the board must be confined to the legislatively enacted rules.

To hold otherwise would mean that when a Zoning Board, from material evidence, became convinced a variance or change should be made, it would then be exercising legislative power.

I cannot accept the contention of the intervenor that as the result of the issuance to her of the building permit of February 18, 1964, she thereby acquired a vested right to

proceed with the acquisition of the property and to develop it. It is undisputed that the intervenor has spent large sums of money in acquiring, rebuilding and equipping her plant. The Court specifically finds that no order was entered by the Zoning Appeals Board until on or about April 20th, 1964. (This in accordance with Justice Holmes' opinion when this cause was before the Supreme Court.) The petition for certiorari was filed April 25th, 1964—well within the sixty day statutory provision (T. C. A. 27-903). To follow the contention of the intervenor would be to deny petitioner her rights under T. C. A. 27-901, et seq.

If the intervenor were correct it would mean that anyone who secured a variance from a Zoning Appeals Board could defest the statutory rights of protestants to the change and thereby nullify T. C. A. 27-901, et seq. It appears to me that any prudent person who secured a change in zoning from a Zoning Board of Appeals would wait sixty days to be sure that the order of the Board is absolutely final. The circumstances of this case are unfortunate because of the delay of the Board in entering its order, but I do not feel that this is justification to nullify T. C. A. 27-901, et seq.

Tax the defendant with the cost.

Decree accordingly.

Ned Lentz, Chancellor.

This March 19, 1965.

Mrs. O. A. Carter.

vs.

Board of Zoning Appeals of Nashville, et al.

No. 85239
In the
Chancery Court,
Part One,
At Nashville.

Decree.

This cause came on to be heard before the Honorable Ned Lentz, Chancellor, on March 1, 1965, and later days, upon the original petition for certiorari, the answer of the defendant, Fred C. Dance, Agent for O. H. Callicott, and replication thereto, the answer of the defendant Board of Zoning Appeals of the City of Nashville, the separate answer of Mrs. E. G. Saverio. Doing business as Babies Valet Service and the replication thereto, the stipulations of the parties, the oral testimony of witnesses, the argument and briefs of counsel, and the entire record in this cause.

From all of which, from the reasons, facts found and opinions of law set out in the Court's memorandum, which is filed herewith and made a part of the record in this cause, the Court is of the opinion that the complainant's petition for certiorari was timely filed and should be sustained.

It is accordingly Ordered, Adjudged and Decreed by the Court that the final order of the Board of Zoning Appeals of the City of Nashville in case No. 63-1, involving the appeal of Fred C. Dance, Agent for O. C. Callicott, concerning the property at 811 Gallatin Avenue, Nashville, Tennessee, is illegal, arbitrary and void and is hereby stricken down. The costs of this cause are taxed against defendants for which let execution issue.

To this decree the defendants respectfully except and pray an appeal to the next term of the Supreme Court sitting at Nashville, which appeal is granted and defendants are allowed thirty days within which to perfect

their appeal, by filing an appeal bond. On application of defendants they are allowed 90 days from the date of this decree within which to prepare and file this Bill of Exceptions.

Approved for Entry:

Signed: James W. Swiggart,
Solicitor for Complainant.

Signed: E. C. Yokley,
Solicitor for Defendants,
Dance, Callicott & Saverio.

Signed: Robert B. Puryear, III
Assistant Metro Attorney,
Solicitor for Board of Zoning Appeals.

Board of Zoning Appeals of Nashville et al., Appellants,

vs.

Mrs. A. O. Carter, Appellee.

Davidson Equity.
Honorable
Ned Lentz,
Chancellor.

For Appellants:

Robert B. Puryear, III, Nashville, Tennessee, E. C. Yokley, Nashville, Tennessee.

For Appellee:

James M. Swiggart, Nashville, Tennessee.

Opinion.

(Filed Feb. 25, 1966.)

Appellee, Mrs. A. O. Carter, filed a petition for certiorari on April 25, 1963, in the Chancery Court of David-

son County, seeking a review of the action of the Board of Zoning Appeals of the City of Nashville in granting a building permit and certificate of occupancy for the operation of a diaper service laundry in a commercial A zone in the City of Nashville.

The facts leading to this controversy and which involve the various parties are: Mrs. E. G. Saverio for many years operated a diaper service lanudry on Meridian Street in Nashville, until she was forced to relocate her business because of an East Nashville Urban Renewal Project.

She became interested in property at 811 Gallatin Road and began negotiations with appellant, Fred C. Dance, an agent for the owner of the property, O. H. Callicott, also an appellant on this appeal. It developed that it would be necessary to secure a variance in the zoning requirements in order to utilize the property for a diaper service laundry and off-street parking of the service trucks for the laundry.

The owner of the property, through his agent, Dance, made application for a building permit and certificate of occupancy which was denied by the Chief Building Inspector.

Dance appealed to the Board of Zoning Appeals. The appeal was heard on January 31, 1963, and on February 11, 1963, the Board announced an oral decision granting the variance. Mr. Charles W. Raby, Jr., Administrative Assistant, sent a memorandum signed by himself to the Department of Codes Administration indicating the Board's action. At that time the Director of Planning of the City Planning Commission was the secretary of the Board, kept all records, and conducted all official correspondence. Mr. Charles W. Hawkins was the then Director of Planning.

On the basis of Mr. Raby's note, a building permit was issued to Mr. Callicott on February 18, 1963.

Thereafter, Mr. Raby drafted a resolution setting out the action of the Board at its meeting on February 11, 1963. This resolution was sent by Raby to the Department of Codes Administration and received by it on April 24, 1963. The resolution was transcribed on the minutes of the Board on April 24, 1963.

Mrs. Saverio purchased the property on March 4, 1963, and has spent large sums of money in rebuilding and equipping the laundry plant.

As stated, Mrs. Carter, who owned and operated a restaurant across the street from the laundry, filed the petition for certiorari on April 25, 1963, in which she alleged the action of the Board of Zoning Appeals in granting the building permit and certificate of occupancy was illegal, arbitrary, and void and in excess of its authority.

On May 21, 1963, Lance, as agent of Callicott, filed a motion to dismiss the petition for certiorari upon the ground the petition was not filed within sixty days from and after the Board of Zoning Appeals had rendered its final decision on February 11, 1963.

The Chancellor sustained the motion and dismissed the petition.

Mrs. Carter appealed to this Court and in an opinion by the late Mr. Justice Holmes, 214 Tenn. 42, 377 S. W. (2d) 914 (1964), in reversing the Chancellor, this Court said:

> "Since T. C. A. Sec. 27-902 provides that the petition for certiorari may be filed within sixty days from the entry of the order of the Board, and since the petition for certiorari alleges that the Board entered no order on February 11, 1963, but issued its order on April 24, 1963, in our judgment, the petition for certiorari alleges that it was filed within the statutory time and does not show on its face that it was filed after the running of the statutory period.

"The review of the action of the Board sought by the petition for certiorari is not a collateral attack upon the action of the Board, but is a direct attack upon the order of the Board. T. C. A. Sec. 27-911 provides that the hearing in the Chancery Court shall be on the proof introduced before the Board contained in the transcript and upon such other evidence as either party may desire to introduce. Under this Code Section the appellant would be entitled to introduce proof tending to prove that the order was in fact entered on April 24, 1963, as alleged. If the proof sustains this allegation, then the petition was filed within the time provided by statute and appellant would be entitled to have the Chancery Court determine in this cause whether or not the action of the Board of Zoning Appeals was illegal or beyond the jurisdiction of the Board.

"It results that the decree of the Chancery Court dismissing the petition for certiorari on motion is reversed and the cause is remanded for further proceedings."

On the remand, each of the appellants filed answers to the petition for certiorari. The Chancellor heard other evidence in addition to that contained in the transcript of the Board of Zoning Appeals. The Chancellor found no order was entered by the Board of Zoning Appeals granting the building permit and certificate of occupancy until on or about April 20, 1963, and that the petition for certiorari filed on April 25, 1963, by Mrs. Carter was filed well within the sixty days from the entry of the order of the Board.

He further found the petition for certiorari should be sustained because the action of the Board of Zoning Appeals in granting a variance for the operation of a power laundry in a commercial A zone was illegal and in excess of its authority.

Callicott, the vendor of the property; Dance, his agent; Mrs. Saverio, the purchaser of the property and intervenor in this suit; and the Board of Zoning Appeals have perfected an appeal to this Court and assigned errors.

Appellants insist the Chancellor was in error in finding the petition for certiorari was filed within sixty days from the entry of the order granting the variance. They argue the evidence shows the order was entered on February 11, 1963.

The Chancellor found the order was entered on or about April 20, 1963; and, therefore, the petition was filed within sixty days from the entry of the order of the Board.

Mr. Justice Holmes in his very able opinion pointed out the distinction between a rendition and an entry of a judgment or order. We agree with the Chancellor the evidence in the record supports a finding the order was made or rendered on February 11, 1963, but was not entered until on or about April 20, 1963.

The petition for certiorari was filed on April 25, 1963, and within sixty days from the entry of the order of the Board as provided in T. C. A. Section 27-902.

All other assignments of error deal with the question of the action taken by the Board in granting the variance for the use of the premises for a diaper laundry, and whether this was proper under the Zoning Ordinances of the City of Nashville.

The property involved is located in a commercial A zone. Section 8 (2) of Chapter 42 of the Code of the City of Nashville (1960) provides, in part:

> "Commercial A District Uses. Within any commercial A district, no building, structure or premises shall be used or arranged or designed to be used in any part except for one or more of the following

uses: '(2) Retail business, commercial bill board or advertising sign, restaurant, hand laundry, self-service laundry, ice delivery station, shop for making articles to be sold at retail on the premises or any other enterprise for profit for the convenience and service of, and dealing directly with and accessible to the ultimate consumer and being an enterprise not mentioned as prohibited in a Commercial B District and not injurious to adjacent premises or occupants thereof by reason of the emission of dust, fumes, smoke, odor, noise, vibration or danger to life and property.'"

Section 9 (18) of the Code permits a "Steam or Power Laundry" for use in a commercial B district. Thus, it is clear the Zoning Ordinance sets out the standards for commercial A zones.

The Board had jurisdiction to hear evidence and to determine whether a variance from the zoning law should be allowed, Bubis v. City of Nashville, 174 Tenn. 134, 124 S. W. (2d) 238 (1939), and a court should not substitute its judgment for that of the Board unless the Board acted arbitrarily or clearly denied the property owners legal rights. City of Memphis v. Qualls, 16 Tenn. App. 387, 64 S. W. (2d) 548 (1933); Reddoch v. Smith, 214 Tenn. 213, 379 S. W. (2d) 641 (1964). However, the decisions of the Board upon applications for variances are subject to judicial review. T. C. A. Section 27-901; Spencer-Sturla Company v. Memphis, 155 Tenn. 70, 290 S. W. 608 (1927); Hoover Motor Express v. Railroad and Pub. Util. Comm'n., 195 Tenn. 593, 261 S. W. (2d) 233 (1953).

The appellants sought relief under Chapter 42, Section 14 (6) of the Code cited above, which provides:

"Where by reason of exceptional narrowness, shallowness or shape of a specified piece of property at the time of the enactment of the zoning regula-

tions, or by reason of exceptional topographical conditions or other extraordinary and exceptional situations or conditions of such piece of property, the strict application of these regulations would result in peculiar and exceptional practical difficulty to or exceptional or undue hardship upon the owner of such property, the Board of Zoning Appeals shall have power in a specific case to vary from such strict application so as to relieve such difficulties or hardships, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zoning plan and the Zoning ordinance."

The Chancellor found, and we agree, there was no proof before the Board which concerned Section 14 (6). There was no evidence that we can find in the record before us of an exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary or exceptional situations or conditions making it difficult or a hardship to use this property for commercial A uses.

The Chancellor found the operation was a power laundry not permitted in a Commercial A zone. The record shows the operation would be three three hundred pound capacity washers powered by an electrically generated steam boiler. The record also shows the operation emits lint, odor, noise and vibration; that customers would rarely go to the business, but instead the soiled diapers would be brought to the laundry by ten to twelve service trucks.

The Board of Zoning Appeals has a wide discretion in administering the zoning laws, but it cannot amend the law under the guise of a variance.

"A Board of the kind here under consideration, being an administrative agency, does not have legislative powers and may not review or amend legislatively

enacted rules as to uses or amend ordinances under the guise of a variance. The Board was created to administer the zoning ordinance but not to formulate and revise it." Reddoch v. Smith, supra.

Under the facts of this case, we agree with the Chancellor the Board exceeded its authority in granting the variance. The Board must confine its findings to legislatively enacted rules. To hold otherwise would mean that when the Board had before it material evidence a variance should be granted, for whatever reason, it could exercise legislative power and make the change. We are of the opinion the granting of the variance by the Board under the facts of this case in effect amended or revised Section 8 (2) of the Zoning Code above quoted and in doing so exceeded its authority.

Finally, it is argued in behalf of the intervenor, Mrs. Saverio, who purchased the property, that as the result of the issuance to Callicott of the building permit on February 18, 1963, and the rendition of the Board's decision on February 11, 1963, she acquired a vested right to proceed with acquisition of the property and to develop it. It is undisputed that the intervenor has spent large sums of money in acquiring, rebuilding and equipping the laundry plant.

If this argument was accepted, it would mean that anyone, who secured a variance from the Board, could defeat the statutory rights of all protestants to the change and thereby nullify T. C. A., Section 27-901, et seq. Thus, we think it is incumbent upon any prudent person who secures a variance to wait sixty days before spending any money to insure that the order of the Board is absolutely final.

The financial injury to the various persons involved in this matter can be traced to the delay of the Board in finalizing its decision into an official record, and the

Board's failure to apply the law as it appears in the Code of the City of Nashville.

The decree of the Chancellor is affirmed with costs.

Chester C. Chattin,
Justice.

Burnett, C. J.,
White, Dyer and Creson, JJ.,
Concur.

Supreme Court, Nashville.

Mrs. A. O. Carter
vs.
Board of Zoning Appeals of Nashville et al.

Davidson Equity.
Affirmed.

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is no error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be in all things affirmed and that the final order of the Board of Zoning Appeals of the City of Nashville in Case No. 63-1, involving the appeal of Fred C. Dance, as agent for O. H. Callicott, concerning the property at 811 Gallatin Avenue, Nashville, Tennessee, is illegal and is hereby stricken down.

The costs of the Court below and the costs of the appeal will be paid one-half by O. H. Callicott and Mrs. E. G. Saverio, Principals, and United States Fidelity and Guaranty Company, surety; and one-half by Board of Zoning Appeals of the City of Nashville; for which let execution issue. 2/25/66.

Board of Zoning Appeals of Nashville, et al.,
Petitioners,
vs.
Mrs. A. O. Carter,
Respondent.
} Davidson Equity.

On Petition to Rehear.

Petitioners have filed a very dignified, courteous and forcible petition to rehear. The petition alleges:

> "Your petitioners respectfully aver that while the Court, in its opinion, decided the rights of the parties with respect to Subsection 15 (6) of the applicable Zoning Code, it did not make any determination or reference to the rights of the appellants in their appeal to the Board with respect to Section 42-14 of Chapter 42 of the Code of Nashville for 1960, in defining additional powers and jurisdiction vested in the Board, which are as follows:
>
> "Any determination by the chief building inspector made in the enforcement of this article may be appealed to the Board of Zoning Appeals by any person deeming himself adversely affected by such decision . . .
>
> "It shall hear and decide all questions brought before it by appeal from the refusal, granting or revocation of permits by the chief building inspector under the provisions of this article . . .
>
> "(7) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision or refusal made by the chief building inspector or any other administrative official in carrying out the enforcement of any provision under these regulations.

"Your petitioners most respectfully point out to the Court that the powers of the defendant Board were and are, therefore, of a broad nature, and that the defendant Board, having taken jurisdiction of the appeal of Messrs. Dance and Callicott in this case under one particular section, i. e., 14 (6), could properly take jurisdiction for all purposes within its properly delegated powers, including the powers above quoted. Your petitioners most respectfully aver that the Board did act within, and well within, the purview of the powers above quoted, lawfully vested by law in said Board, in granting the requested permit and certificate of occupancy, and that this Honorable Court, at least, as reflected by the language of the Opinion, did not adjudicate the rights of these petitioners under those sections of the applicable Zoning Code of Nashville.

"Petitioners aver that under these powers granted to the Board, the Board had the right and did, in fact, determine that the uses to be made of the petitioners' property conformed with the reasonable restraints imposed by law on the property of these petitioners. Your petitioners aver most respectfully that under its interpretive powers, therefore, the Board could have lawfully held, and did hold that the modern instrumentalities now available for the type of service rendered under the permit would conform with the uses permitted in the Commercial A District in which the property of these petitioners is located. In the light of these additional powers granted to the Board to make interpretations, as set out above, which powers were not adjudicated or passed upon in the Court's Opinion, these petitioners respectfully aver that it would be in order for the Court to grant a rehearing in this cause and set the same down for argument, on rehearing, in order that these contentions might be more fully presented to the Court."

However, we quoted Section 8 (2) of Chapter 42 of the Code of the City of Nashville (1960) which provides a hand-laundry and a self-service laundry are permitted in a Commercial A District, but excludes "an enterprise not mentioned as prohibited in a Commercial B District and not injurious to adjacent premises or occupants thereof by reason of the emission of dust, fumes, smoke, odor, noise, vibration or danger to life and property."

The writer of the original opinion erroneously said Section 9 (18) of the Code permits a "steam or power laundry" for use in a Commercial B District; when, in fact, the Section prohibits a steam or power laundry in a Commercial B District.

We further said, and we quote from our original opinion:

> "The Chancellor found the operation was a power laundry not permitted in a Commercial A Zone. The record shows the operation would be three, three hundred pound capacity washers powered by an electrically generated steam boiler. The record, also, shows the operation emits lent, odor, noise and vibrations; that customers would rarely go to the business, but instead the soiled diapers would be brought to the laundry by ten to twelve service trucks."

Moreover, Section 9 (18) of the Code, prohibits a "steam or power laundry" for use in a Commercial B District which is prohibited for that reason in a Commercial A District.

Finally, we held, and we are of the same opinion, the Board exceeded its authority, under the facts of this case, in granting the variance because in so doing it amended Section 8 (2) of the Zoning Code, which we quoted in our original opinion.

The same applies to the argument the Board had authority to interpret the zoning laws; that is, the Board had no

authority to amend the Zoning Ordinance under the guise of an interpretation of the ordinance.

Accordingly, the petition to rehear is denied.

(Signed) Chester C. Chattin, Justice.

Burnett, C. J.,
White, Dyer and Creson, JJ.,
Concur.

Supreme Court, Nashville.

Mrs. A. O. Carter
vs.
Board of Zoning Appeals of Nashville et al. } Davidson Equity.

PETITION TO REHEAR DENIED.

This cause coming on further to be heard on a petition to rehear and reply thereto, upon consideration of all of which and the Court finding no merit in the petition, it is denied at the cost of the petitioner. 5/6/66.

(Minute Book 47, Page 72).

APPENDIX C.

Excerpts From Separate Answer of Petitioner (Intervenor Below) Raising Questions of Vested Rights and Interference With Constitutional Rights.

"Your intervenor now avers that she has, in reliance on the permit heretofore issued, expended huge sums of money, representing her lifetime of investment financially and hard work at long hours, and that as the result of her said expenditures she feels that she has acquired a vested right to continue with her business, having begun said investments in good faith, and having made a substantial portion of her said investment in her present location prior to the institution of the proceedings in this cause . . . the intervenor avers that . . . she has under the facts heretofore outlined acquired a kind of vested right of which she respectfully avers she cannot be divested without interference with her constitutional rights in and to the use of her property."

Excerpts From Brief in Support of Petition to Rehear Before the Tennessee Supreme Court.

"It hence results, we respectfully urge, that Mrs. Saverio has been denied a vested right to proceed under her permit in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, and in violation of Article I, Section 8, of the Constitution of Tennessee."

Assignments of Error I, III, IV, V, VI, VII, X, XI, XII, XIV, XV, and XVI.

I.

The Chancellor erred in holding that the complainant's petition for certiorari was timely filed, such holding being contrary to the weight of the evidence before the Court.

III.

The Chancellor erred in sustaining the petition for certiorari on the grounds that the action of the Zoning Board of Appeals was illegal.

IV.

The Chancellor erred in holding that the final order of the Board of Zoning Appeals of Nashville was illegal, arbitrary and void.

V.

The Chancellor erred in holding that the laundry operation in question in this cause would not be a lawful use in a Commercial A zone.

VI.

The Chancellor erred in construing Section 14 (6) of the zoning ordinance of the City of Nashville as being the only basis for relief by the applicants for a variance when appearing before the Board of Zoning Appeals.

VII.

The Chancellor erred in holding that the effect of the action of the defendant Board of Zoning Appeals was to amend the zoning laws of the City of Nashville under the guise of a variance, and in not holding that said board made a determination of fact and law within its powers.

X.

The Chancellor erred in substituting his judgment for the judgment of the defendant Board of Zoning Appeals.

XI.

The Chancellor erred in not holding that the broad powers of review by the defendant Board of Zoning Appeals, as detailed in the stipulations in the cause, gave to

said board the right to determine permissive uses for laundry services of the type proposed by the applicants for a variance in this cause in a Commercial A District.

XII.

The Chancellor erred in not holding that the defendant Board of Zoning Appeals could consider the modern instrumentalities of the applicants for a variance in this cause in the operation of a "Babies Valet Service" by way of interpretation of the permissive uses in Commercial A Districts in the City of Nashville.

XIV.

The Chancellor erred in not indulging the well established rule in favor of these defendants that zoning ordinances should be strictly construed in favor of the property owner.

XV.

The Chancellor erred in rejecting the contention of the intervenor, Mrs. E. G. Saverio, that she has acquired a vested right to proceed with her Babies' Valet Service operations in good faith reliance on the permit issued on February 18, 1963.

XVI.

The Chancellor erred in holding that the Intervenor, Mrs. E. G. Saverio, did not act prudently in proceeding under the permit approved on February 11, 1963, and issued on February 18, 1963.